

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLEE**





# 74-1193

To be argued by  
THOMAS F. MAXWELL, JR.

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P/S

## United States Court of Appeals FOR THE SECOND CIRCUIT

Docket No. 74-1193

UNITED STATES OF AMERICA,

*Appellee,*

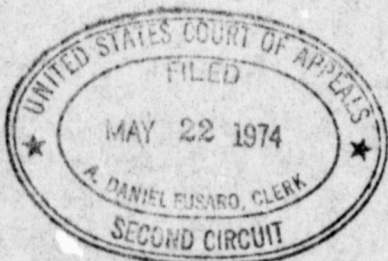
—v.—

CHARLES HARRIS and RONALD CATRON,

*Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

### BRIEF FOR THE APPELLEE



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UNITED STATES OF AMERICA,

*Appellee,*

—v.—

CHARLES HARRIS and RONALD CATRON,

*Appellants.*

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**BRIEF FOR THE APPELLEE**

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**Statement of the Case**

On December 13, 1972, a Federal Grand Jury, sitting in New Haven, Connecticut, returned a four-count indictment (Criminal No. 13,223) charging Charles Harris, Earl Harris a/k/a Giant, Carl Gray a/k/a Carl William James \* and Ronald Oswald Catron with violations of Title 18, U.S.C., Section 2113(a)(b)(c)(d) and Title 18, U.S.C., Section 2(a) and 2(b) in connection with the armed robbery of the East Derby Branch of the Derby Savings Bank on November 6, 1974.

Prior to this, on November 6, 1972, U.S. Magistrate Arthur H. Latimer had issued warrants for the arrest of

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\* The cases of Earl Harris and Carl Gray were severed from those of Charles Harris and Ronald Catron prior to selection of a jury. Carl Gray was named only in Count 4 of the indictment. When hereinafter referred to, Charles Harris will be called Harris, Earl Harris will be called "Giant".



Charles Harris, Earl Harris a/k/a Giant, and Carl Gray on a complaint charging them with robbing that bank on November 6, 1972.

On January 2, 1973, Harris entered a plea of not guilty to counts one, two and three of the indictment. Catron pleaded not guilty to counts 1, 2, and 3 of the indictment on January 8, 1973.

Pre-Trial written motions were filed on behalf of Harris and Catron. The jury trial of Harris and Catron commenced on October 24, 1973, Judge Jon O. Newman presiding, at which time evidence was taken on previously filed written motions for suppression of evidence. The Government rested its case on November 7, 1973. On November 14, 1973, the defendants rested their cases. The Government presented rebuttal testimony and all evidence was concluded on November 14, 1973.

At the conclusion of the Government's rebuttal evidence on November 14, 1973, summations by counsel were heard, and the jury was charged by the Court. A verdict of guilty on counts 1, 2, and 3 was returned against Harris and Catron by the jury on November 16, 1973.

On February 6, 1973, Harris was sentenced to imprisonment for a term of five years. On the same date Catron was sentenced to a term of imprisonment for five years. Thereafter, both defendants filed a timely notice of appeal.<sup>1</sup>

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<sup>1</sup> Appellant Catron has not filed a brief in this matter. His attorney has filed a motion dated May 3, 1974 requesting to be relieved as counsel. In the body of the motion counsel for Catron indicates that he has reviewed the record and finds no appealable issue for review by this Court.

## **Statutes Involved**

### **18 U.S.C. § 2. Principals**

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

### **18 U.S.C. § 371. Conspiracy to commit offense or to defraud United States**

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

### **18 U.S.C. § 2113. Bank robbery and incidental crimes**

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; or

Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such

bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.

(b) Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding \$100 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both; or

Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value not exceeding \$100 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(d) Whoever, in committing, or in attempting to commit, any offense defined in subsection (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than \$10,000 or imprisoned not more than twenty-five years, or both.

Connecticut General Statutes

§ 6-49. Arrest without warrant. Pursuit outside precincts

Sheriffs, deputy sheriffs, county detectives, constables, borough bailiffs, police officers, special protectors of fish and game and railroad and steamboat policemen, in their respective precincts, shall arrest, without previous complaint and warrant, any person for any offense in their jurisdiction, when such person is taken or apprehended in



the act on the speedy information of others, and members of the state police department or of any local police department or county detectives shall arrest, without previous complaint and warrant, any person who such officer has reasonable grounds to believe has committed or is committing a felony. Members of any local police department, when in immediate pursuit of one who may be arrested under the provisions of this section, are authorized to pursue such offender outside of their respective precincts into any part of the state in order to effect the arrest. Such person may then be returned in the custody of such officer to the precinct in which the offense was committed. Any person so arrested shall be presented with reasonable promptness before proper authority.

1949 Rev., § 465; 1953, Supp. § 150c; 1955, Supp. § 195d; 1961, P.A. 239; 1971, P.A. 754.

#### § 53a-133. Robbery defined

A person commits robbery when in the course of committing a larceny, he uses or threatens the immediate use of physical force upon another person for the purpose of:

(1) Preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking; or

(2) compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny.

(1969, P.A. 828, § 135, eff. Oct. 1, 1971.)

### Questions Presented

1. Was Harris' arrest lawful?
2. Did the use of leading questions deny Harris a fair trial?

### Statement of Facts

On November 6, 1972, the East Derby Branch of the Derby Savings Bank was held up. Three black males without masks entered the bank at approximately 11 a.m.; at least two of the robbers were carrying weapons (1a, 2a, 3a, 4a, 5a, 6a, 7a, 8a, 9a, 10a, 11a, 12a, 13a).<sup>2</sup>

Present in the bank at the time were tellers Torak, Davies, and Lonergan, and the branch manager, Buckley (14a). Two of the robbers went behind the tellers' counter and forced the tellers to go to a bathroom located within the customer area of the bank (14a, 15a). The third robber stopped Buckley as he was exiting the bathroom and ordered him back (16a). After the tellers were placed in the bathroom along with Buckley, they remained there for approximately five minutes. When the bank employees exited the bathroom they discovered the robbers were gone and the tellers' drawers had been emptied. Buckley immediately set off the robbery alarm and notified the authorities (17a, 18a).

The sum of \$49,663 in currency was taken by the robbers (16a, 17a, 18a, 19a). The bank was insured by the Federal Deposit Insurance Corporation at the time of the robbery (20a).

The East Derby Branch of the Derby Savings Bank was located in a shopping center which also contained a store called the Wawa Food Market (21a, 22a). On the evening of November 5, 1972, at approximately 9 p.m., John Petrowski and Mary Petrowski went to the Wawa Food Market (23a). John Petrowski remained in their auto while Mrs. Petrowski went to the Wawa Food Market. Mr. Petrowski observed a tan Buick automobile parked in front of the bank; there were no other cars in the parking lot at this

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<sup>2</sup> Where stated material is reproduced in appellee's appendix it is denoted as just (—a).

time. (The Wawa Food Market and the bank are located at opposite ends of the shopping center.) He observed a tall young Negro male exit the Buick and enter the Wawa Food Market. After a period of time the tall young Negro left the food market and entered the tan Buick which remained parked in front of the bank (22a 23a, 24a). Mrs. Petrowski returned to their car and as they were leaving the shopping center in their vehicle Mr. Petrowski drove over to the area of the parked Buick and requested his wife to write down the license number of the Buick, LH6795, which she did (Exhibit 29) (25a, 26a, 27a, 28a, 29a). At that time there appeared to be three occupants in the tan Buick (28a, 29a).

On November 5, 1972, Charles Harris was the owner of an 8-cylinder, 2-door sports coupe bearing license number LH6795 (Exhibit 11) (30a, 31a, 32a).

Approximately 2:30 a.m. on November 6, 1972, Officer Polizzi of the Orange Police Department stopped a Chevrolet automobile approximately  $\frac{1}{2}$  mile from the East Derby Branch of the Derby Savings Bank. This car contained three black males and one female (33a, 34a). The automobile was being operated by Carl Gray who was arrested for driving without a license. The other occupants of the car were Giant, Edna "Rene" Jones, and Prest (35a, 36a, 37a, 38a). The vehicle was impounded by Officer Polizzi and then the other occupants of the vehicle began to walk in an easterly direction towards the Derby Savings Bank (39a, 40a). Edna "Rene" Jones, Giant, and Prest walked along Derby Avenue to the Derby Savings Bank where Giant placed a telephone call to his brother, Charles Harris, and requested someone to come and pick them up (38a, 41a, 42a). At approximately 3 or 4:00 a.m. Harris' automobile, driven by Catron, appeared at the bank to pick up Giant, Edna "Rene" Jones, and Prest. Harris was not present in the automobile (43a, 44a, 45a).

Catron then drove Giant, "Rene" Jones, and Prest to Ansonia and then back to New Haven, Connecticut. After driving back to New Haven Catron drove Giant and "Rene" to the residence of Clara "Bunny" London on Howard Avenue where "Rene" remained until the afternoon of November 6. After "Rene" and Giant arrived at "Bunny's", Giant left to see his brother, Charles Harris, who at that time lived a few houses down from "Bunny's" (45a, 46a, 47a, 48a).

On the morning of the bank robbery at approximately 8 a.m. Harris appeared at "Bunny" London's apartment and was accompanied by another young black male who was light-skinned and had marks on his face. Giant then left "Bunny" London's apartment with his brother and the young black male (49a, 50a, 51a, 52a, 53a).

Harris, Giant, and the young black male then drove to the residence of Gilbert "Coldcut" Robinson at 155 North Main Street, Ansonia, Connecticut, in Harris' Buick automobile (54a, 55a, 56a, 57a). At this location Art Stanton, a neighbor of Robinson, was asked for the exact location of Robinson's apartment by one of the occupants of the Harris vehicle and Stanton told them where Robinson lived (58a, 59a, 60a, 61a).

Harris and Giant entered Robinson's apartment where they requested him to lend them his automobile, a 1967 Pontiac GTO (62a, 63a). Robinson was told by the Harris brothers if he lent them his car they would "make it worth his while". Robinson agreed to lend them his Pontiac GTO and gave Giant the key. Robinson was asked to report the car stolen and Harris told him where it could be found (64a, 65a, 66a, 67a). On November 6, 1972, Robinson owned a 1967 GTO Pontiac, black 2-door hardtop, license number 2H4486 (68a, 69a).

Art Stanton observed Giant drive off in Robinson's automobile and he was immediately followed by Harris in his Buick with the young black male a passenger (70a, 71a).



The robbery of the bank occurred at approximately 11 o'clock in the morning and the surveillance camera in the bank shows three black males coming in the entryway to the bank (Exhibits 6, 7 and 8) (7a, 8a, 9a, 10a).

The bank manager described the robber who held the revolver on him at the bathroom door as being a young black male with gold-rimmed glasses, light skinned, with a pockmarked face (72a, 73a, 74a, 75a). He made an in-court identification of Catron as being the robber that held the gun on him (76a). Teller Davies also observed gold-rimmed glasses on the robber that held the gun on Buckley (77a).

Teller Lonergan observed a dark blue car parked outside of the bank prior to the bank robbery and observed it was gone after the bank robbery (78a, 79a).

Officer Fredericks of the Derby Police Department was directing traffic at a construction site a few minutes after 11:00 a.m. when he observed a dark GTO, license number HH4486 drive past him eastbound towards New Haven, Connecticut (80a, 81a, 82a). It appeared to him the car contained three black males (83a, 84a). A short period of time later he heard a broadcast of the robbery of the Derby Savings Bank and he went to the bank (85a).

Derby Police Officer Orts located a Pontiac GTO, Connecticut license No. HH4486 (Robinson's vehicle) parked on Sodom Lane adjacent to the Hines farm driveway approximately half a mile from the Derby Savings Bank Orts found no vehicles other than Robinson's at this location (86a, 87a, 88a, 89a).

On November 6, 1972, at approximately 10:55 a.m. Paul Mudry drove past the East Derby Branch of the Derby Savings Bank in an easterly direction on Derby Avenue [toward New Haven] (90a, 91a). He made a left turn from Derby Avenue onto Sodom Lane approximately 3 or 4

minutes later. As he drove past the Hines farm driveway he observed a two-tone Buick, "Electra-like", automobile. The Buick's roof was dark and the body tan (92a, 93a, 94a).

At approximately 1:30 p.m. Officer Zalinsky of the Ansonia Police Department observed Harris' Buick parked in front of Gilbert Robinson's house at 155 No. Main Street Ansonia. At that time Harris was accompanied by a young black male who who approximately 5'6", had long hair and was wearing a red hat (95a, 96a, 97a, 98a, 99a, 100a).

Art Stanton also saw Harris at this time and testified that the black male he observed in Harris' auto on the morning of November 6, 1972, in front of the Robinson apartment, was with Harris at Robinson's apartment in the afternoon after the robbery. Stanton selected the photograph of Catron as being the person with Harris on November 6, 1972 [Exhibit 16(E)] (101a, 102a, 103a, 104a, 105a, 106a, 107a, 108a, 109a, 110a).

Harris went to Boston, Massachusetts, in the afternoon of November 6, 1972, and stayed at the residence of Catron for a few days (111a, 112a). While in Boston Harris contacted Detective Cohens of the New Haven Police Department via telephone on the evening of November 15, 1972 (113a, 114a). During their first telephone conversation Harris admitted to Detective Cohens, after Cohens advised him he had seen his picture in the paper, that it was a "stupid thing we did" in a conversation concerning the bank robbery (115a, 116a, 117a). Harris agreed to turn himself in to Detective Cohens and later that evening again phoned Detective Cohens and told him that he would surrender to Detective Cohens the next day (November 16) in New Haven (117a, 118a).

On November 16, 1972, Detective Cohens went to the Trailways Bus Station in New Haven, Connecticut (119a). Detective Cohens waited at the station for a period of time

and then left to attend to some other police business (120a). When Detective Cohens returned to the Trailways Bus Station he met Harris whom he immediately placed under arrest and gave him verbal "Miranda Warnings" (121a, 122a, 123a). Detective Cohens placed Harris in handcuffs and then transported him to the New Haven Police Department Detective Bureau in his police vehicle (123a).

At the New Haven Detective Bureau Harris was again verbally advised of his rights by Detective Cohens (124a) and shortly thereafter Special Agents Townsend and Parker of the Federal Bureau of Investigation arrived at the detective bureau and took custody of Harris (125a, 126a).

Agent Townsend advised Harris that he was under arrest for robbing the Derby Savings Bank and Harris indicated he would cooperate with the agents (127a, 128a).

Harris and the agents then went to an interview room where Harris executed the form entitled "Your Rights" (Exhibit 25) (129a) and then gave an oral and written signed statement in which he admitted that he had participated in the robbery of the Derby Savings Bank on November 6, 1972 (Exhibit 26) (130a, 131a, 132a, 133a, 134a, 135a, 136a, 137a, 138a, 139a, 140a).

Harris in testifying in his own behalf denied participating in the bank robbery and stated he spent a portion of the morning of the robbery and the afternoon with a girlfriend in New Haven. He then drove to Boston to see Catron in the late afternoon (141a, 142a, 143a, 144a). Harris did admit to telephoning Detective Cohens and agreeing to meet him at the Trailways Bus Station (145a, 146a, 147a). Harris stated he was in or knew the whereabouts of his car on Sunday evening November 5, 1972, and it was not parked in front of the Derby Savings Bank in the parking lot where the bank and the Wawa Food Market were located (148a, 149a, 150a, 151a, 152a, 153a, 154a).

Catron testified in his own behalf and stated that while he did not attend work that day, he was in Boston and spent the day with friends. He denied that he was in the New Haven, Connecticut, area during the early morning hours of November 6, 1972 (155a, 156a, 157a, 158a, 159a). He stated that on the evening of November 6, 1972 he returned to his apartment and found Harris there (160a).

Edna "Rene" Jones testified that sometime during the early part of 1973 she was at an apartment in New Haven where she met Catron (161a, 162a, 163a). At that time he admitted to her that he was the one who was driving Harris' Buick on the morning of November 6, 1972, and had picked up Giant and Rene in front of the Derby Savings Bank. Catron asked "Rene" not to tell anyone she knew him (164a, 165a, 166a, 167a, 168a).

## **ARGUMENT**

### **I.**

#### **The arrest of Harris was lawful.**

The Court conducted an evidentiary hearing on Harris' motion to suppress his admissions and statements which occurred prior and subsequent to his arrest on November 16, 1972. The Court denied all motions for suppression, finding Harris' arrest was lawful and allowed the admissions and statements to be presented in evidence to the jury.

Upon learning of the robbery of the Derby Savings Bank on November 6, 1972, Detective Cohens, New Haven Police Department, attempted to locate Harris and Giant, two suspects in the robbery (169a, 170a). He contacted the sister of the Harrises and asked if she had heard from Giant and Harris. He gave Midge Harris the private tele-



phone number at the New Haven Police Department (171a, 172a).

On the evening of November 15, 1972, Harris telephoned Detective Cohens at the New Haven Police Department's detective division. During their conversation concerning the bank robbery Detective Cohens told Harris that various law enforcement agencies were looking for him. Detective Cohens also told Harris that he had seen his picture in the newspaper (173a, 174a, 175a, 176a). Harris stated to Detective Cohens that it was "a stupid thing we did", and Harris agreed to surrender to Detective Cohens alone in New Haven the next day [November 16, 1972].

Detective Cohens knew there was a federal warrant outstanding for the arrest of Harris and he requested a copy [of the warrant] to be sent to the New Haven Police Department's detective division (177a, 178a).

The next morning Detective Cohens went to the bus station to meet Harris. He was called away on other police business, but upon his return to the bus station he saw Harris. Cohens approached Harris and after identifying himself placed Harris under arrest, advised him of his rights, handcuffed him, and placed him in a police vehicle. Harris was then transported to the detective division of the New Haven Police Department by Cohens (179a, 180a, 181a, 182a, 183a).

Shortly after Harris arrived at the detective division Special Agents of the Federal Bureau of Investigation arrived. Harris was again advised he was under arrest and advised of his rights. Harris gave an oral and signed statement concerning his participation in the bank robbery.<sup>3</sup> Harris was then presented before the United States

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<sup>3</sup> The court found that Harris made an inadvertent error when he wrote the words "true in correct" and that under all of the circumstances this error did not affect the admissibility of Harris' signed statement (195a, 196a, 197a).

Magistrate in New Haven, Connecticut at 2:41 p.m. on November 16 (184a, 185a, 186a, 187a, 188a, 189a, 190a, 191a, 192a, 193a, 194a).

A state officer may arrest without warrant for a violation of federal law and in the "absence of an applicable federal statute the law of the state where an arrest without warrant takes place determines its validity". *United States v. DiRe*, 332 U.S. 581, 587-591 (1947). The Connecticut statute concerning the authority of a member of a local police department to arrest without a warrant is found in Conn. Gen. Stat., Section 6-49 (Supp. 1972) which provides in part:

... and members ... of any local police department ... shall arrest, without previous complaint and warrant, any person who such officer has reasonable grounds to believe has committed or is committing a felony ...

In *State v. Cobuzzi*, 161 Conn. 371, 376 (1971), and *Martyn v. Donlin*, 151 Conn. 402, 409 (1964), the Connecticut Supreme Court examined a police officer's authority under Connecticut law to arrest without a warrant and held an officer is authorized to arrest without a warrant "any person who such officer has reasonable grounds to believe has committed or is committing a felony". If the officer knows of the existence of the warrant he does not have to have the warrant in his possession to effect a lawful arrest. *State v. Delgado*, 161 Conn. 536, 545 (1971).

Detective Cohens arrested Harris for a crime which was a felony under both state and federal law. Cohens knew of the existence of the federal warrant for the arrest of Harris and this supplied probable cause sufficient for Cohens to arrest Harris. *Whiteley v. Warden*, 401 U.S. 560 (1971); see also *State v. Cobuzzi*, *supra*, at 376. The District Court found that the warrant for the arrest of Harris

was "adequately supported by probable cause" (Tr. 701). *Sims v. Smith*, 115 Conn. 279 (1932) and *State v. Carroll*, 131 Conn. 224 (1944) cited in appellant's brief, pages 19-20, construed the authority of a police officer to arrest without a warrant prior to the amendment of the Connecticut statute, section 6-49 to its present form. In *Raffone v. Adams*, 468 F.2d 860, 867, n. 12 (2d Cir. 1972) this court reviewed Conn. Gen. Stat. section 6-49 (Supp. 1972) and agreed that section 6-49 authorizes a warrantless arrest for a felony if the officer has probable cause.

Whatever Detective Cohens believed his authority to arrest Harris is not significant. His legal conclusions does not determine the lawfulness of the arrest. If the facts known to Cohens justified his arrest of Harris, it then was a lawful arrest. *United States v. Russian*, 192 F. Supp. 183 (D. Conn. 1961).

Connecticut law does not prohibit a local police officer from making an arrest for a federal felony. Therefore, under federal law the arrest of Harris was valid. *United States v. DiRe, supra*; *Marsh v. United States*, 29 F.2d 172, 173 (2d Cir. 1928); see also *United States v. One Reo Motor Truck*, 6 F.2d 412 (D.R.I. 1925).

The District Court found that Harris' statement over the phone to Cohens did not require Miranda warnings, and that any admissions and statements made by Harris to Cohens and Federal Bureau of Investigation agents were made after advice of rights. The circumstances of the questioning was neither coercive nor hostile, and that afterwards Harris was promptly presented before the U.S. Magistrate.

On November 16, 1972, a federal warrant for the arrest of Harris, based on the robbery of the Derby Savings Bank, was outstanding. Detective Cohens was a member of the New Haven Police Department, New Haven, Connecticut.

Detective Cohens knew that the Derby Savings Bank had been robbed, Harris had admitted on November 15, 1972, to Cohens that he was involved in the robbery. Cohens had reasonable grounds to believe that Harris had committed a felony [which was a violation of both Connecticut state law, Connecticut General Statutes § 53a-133, and federal law, Title 18 U.S.C. 2113(a)] and he could arrest Harris under the authority of Conn. Gen. Stat. section 6-49 (Supp. 1972).

## II.

### **The government's use of leading questions did not deprive defendant Harris of a fair trial.**

The jury trial in this matter commenced on October 24, 1973, and concluded on November 16, 1973. A total of 36 witnesses testified before the jury.<sup>4</sup> Several of the witnesses the government presented were reluctant, frightened, and two admitted to lying to either the local police, F.B.I., and/or the grand jury concerning their knowledge of certain facts related to the robbery of the Derby Savings Bank. Art Stanton demanded to know who had given his name as a witness when he took the witness stand and later had to be ordered to return to court to give testimony (198a, 199a, 200a). Gilbert Robinson had filed a false report with the Ansonia Police Department concerning his automobile and when interviewed by the F.B.I. again withheld information concerning how Giant and Harris had obtained possession of his vehicle. Robinson also lied to the grand jury with regard to how Harris and Giant had obtained his auto. It was only after Robinson was threatened with a perjury prosecution that he agreed to tell the truth (201a, 202a, 203a, 204a, 205a). "Rene"

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<sup>4</sup> Eighteen witnesses testified during the government's case in chief; three witnesses testified in rebuttal to portions of the defendants' evidence. Fifteen witnesses testified on behalf of the defendants.



Jones also lied to the grand jury and the Court commented during a colloquy concerning her testimony that she was a reluctant and frightened witness (206a, 207a, 208a, 209a, 210a, 211a).

The government's use of leading questions when Exhibit 8 [a bank surveillance photo] was shown to Robinson was a matter considered by the court below. It is submitted that the use of leading questions is a matter left to the sound discretion of the trial court. 3 J. Wigmore, *Evidence*, sections, 770, 774 and 776 (Chadbourn rev. 1970).

The government did not attempt to use Exhibit 8 during the direct examination of Robinson. The question of Robinson's ability to identify an individual in a photograph arose during the cross-examination by defendant Catron (212a, 213a). On redirect examination of Robinson the government sought to have Robinson identify which individual shown in Exhibit 8 was Giant. The bank manager, Buckley, had made an in-court identification of Catron as being the robber who had held a gun on him during the robbery (76a). On cross-examination by defendant Catron, Buckley indicated he had originally selected a photograph of Giant [Defendants' Exhibit A] as looking like the person who had held a gun on him (214a, 215a, 216a, 217a, 218a). It was therefore significant to the government to be able to show that Giant was shown in Exhibit 8 and that he was a different robber from the person that Buckley had identified as having held the gun on him.<sup>5</sup>

By the use of leading questions the government was able to have Giant identified in Exhibit 8 and insure that an otherwise reluctant witness did not identify the defendant Harris as being an individual shown in the photograph.

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<sup>5</sup> It was Catron's contention that Giant was the one who had held a gun on Buckley and that he [Catron] was a victim of misidentification (219a, 220a, 221a, 222a, 223a, 224a, 225a).

The subject of the bank surveillance photograph was not raised by the government during the direct examination of Detective Cohens. During Cohens' direct examination he testified with reference to his telephone conversation with Harris on November 15, 1972: . . . "I told him it would be best for him [Harris] if he came in and got this matter straightened out, and his *picture was on TV and was also in papers . . .*" [Emphasis added] (226a, 227a).

There was no testimony concerning a bank surveillance photo from this witness. The Court heard Harris' offer of proof concerning the questioning about a picture in the papers and on TV. The Court determined that the government was not questioning concerning the bank surveillance photograph (228a, 229a). In addition, the Court cautioned the government concerning the issue of the bank surveillance photograph and the government did not attempt to place any evidence from this witness concerning the bank surveillance photograph before the jury (229a, 230a).

When Harris testified on his own behalf he stated that his brother, Giant, was shown in Exhibit 8 and Harris denied that he was pictured in Exhibit 8 (Tr. 1208-1210). Any possible harm to Harris was erased by his denial to the jury that he was shown in Exhibit 8.

Taking all factors into account, this incident with the witness Robinson arose early in a long trial in which there were several reluctant witnesses. This incident did not deny Harris a fair trial.

## CONCLUSION

**There was overwhelming evidence to convict the appellants and there was no error in the rulings of the District Court during trial. It is respectfully urged that the judgments of conviction in this case be affirmed.**

Respectfully submitted,

STEWART H. JONES  
*United States Attorney*

By: THOMAS F. MAXWELL, JR.  
*Assistant United States Attorney*

United States Court of Appeals  
FOR THE SECOND CIRCUIT

No. 74-1193

UNITED STATES OF AMERICA  
Appellee

v.

CHARLES HARRIS and RONALD CATRON  
Appellant

AFFIDAVIT OF SERVICE BY MAIL

Albert Sensale, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 914 Brooklyn, Ave  
Brooklyn, N.Y.

That on the 22nd day of May, 1974, deponent served the within Brief and Appendix for Appellee  
upon Thomas D. Clifford, Esq.; Federal Public Defender, 770 Chapel Street  
New Haven, Connecticut  
Leander Gray, Esq.; 361 Sherman Ave, New Haven, Connecticut

Attorney(s) for the Appellants in the action, the address designated by said attorney(s) for the purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Post Office department within the State of New York.

Sworn to before me,

*Albert Sensale*

This 22nd day of May 1974

*William A. McKaigney*  
WILLIAM A. MCKAIGNEY  
Notary Public, State of New York  
No. 41-7846700  
Qualified in Queens County  
Certificate filed in Kings County  
Commission Expires March 30, 1976



